

Please cut your hedge

In June 2005 Part 8 of the Anti-Social Behaviour Act 2003 came into force providing a mechanism for resolving disputes between neighbours over boundary hedges.

For many years boundary hedges have caused problems between neighbouring house owners. The most common culprit is the leylandii which is a very fast growing thick evergreen hedging plant. If leylandii is not kept regularly trimmed it can provoke the fury of neighbours complaining of loss of sunlight to their gardens. It has always been possible to take action against high buildings or walls and to remove intruding roots or overhanging branches providing the cuttings are returned to the owner.

Under the new Act it is now possible to apply for an adjudication from your local council which could in turn lead to a court order requiring the owner of the hedge to reduce its size.

The legislation provides that complaints should only be made if the hedge exceeds 2 metres in height and causes significant interference with the reasonable enjoyment of your 'dwelling'. 'Significant interference' would include, for example, obstruction of light to windows to your house and definition of 'hedge' refers to a line of two or more evergreen or semi-evergreen trees such as leylandii, laurel and holly but not deciduous trees such as beech.

The legislation does not apply to the problem of encroaching roots or overhanging branches where the law remains the same. In those cases if a problem cannot be resolved by

negotiation application would have to be made to the Court.

The local council will only become involved in disputes over the height of a hedge but not, for example, its type or width, and only after the complainant has made reasonable attempts to resolve the problem with his neighbour. Guidance on how to resolve this type of problem can be found in a leaflet *Over the Garden Hedge* which is on the web site of the Office of the Deputy Prime Minister at www.odpm.gov.uk/treesandhedges. Further information is available from the pressure group Hedgeline on its website at <http://freespace.virgin.net/clare.h>.

If you have exhausted the option of a negotiated settlement and want to apply to your local council you will need to obtain a complaint form on which you can set out the nature of the problem including a plan and helpful photographs. Your local council having received your complaint will consider all the relevant information and evidence and carry out an inspection of the offending hedge. The local authority adjudicator will endeavour to strike a fair and sensible balance between the rights of the hedge owner and those of the complainant. A compromise solution involving a degree of reduction of the hedge will be the answer in most cases. Further information can be found in the Government leaflet *'High Hedges: Complaining to the Council'*.

If all else fails we are happy to advise you as to your further remedies and options including, but only as a last resort, taking the dispute to Court.

TOM HARRISON —Senior Partner

Welcome

Welcome to the Autumn/Winter 2005 edition of our Newsletter. Since the publication of our last newsletter we have appointed Jeanette O'Brien to head our conveyancing team at the Saffron Walden office. Jeanette qualified as a Solicitor in 1985 and has a great deal of experience in both commercial and residential conveyancing.



On page 2, to help you put names to faces, there is a photograph of all of the staff involved in conveyancing work at both of our offices. The photo was taken after a recent meeting. These take place regularly to ensure that the team keeps up-to-date with conveyancing legislation, procedures and new technology.

Contents

Please cut your hedge	1
Consumer rights	2
Lexcel: The Mark of Excellence	2
The Conveyancing Team	2
Public Rights of Way	3
A leopard never changes its spots	3
CAFCASS	4
Periodical Payments	4

Adams HARRISON

Consumer Rights

Frequently we are asked to advise clients when goods they have purchased are faulty or stop working. There is nothing more infuriating than spending good money on a new appliance, furnishings or perhaps a motor vehicle only to find that you are back to washing the dishes yourself because the dishwasher you only recently bought has stopped working; or the car you had always dreamed of is stuck on your driveway as it won't start.

Consumers have rights and the starting point for advising anyone that has bought goods that are faulty, or won't do what it said it would in the sales blurb, is The Sales of Goods Act. Implied into every contract for sale, where the seller sells in the course of business, is that the goods are of 'satisfactory quality'. A seller cannot exclude this implied term. To do so would be a breach of the Unfair Contract Terms Act 1977.

What does 'satisfactory quality' mean? It includes not only fitness for purpose, safety and durability, but also appearance, finish and freedom from minor defects.

If the goods you have bought are not of

satisfactory quality are you entitled to return the goods and seek a full refund? A buyer loses the right to reject goods and seek a refund if he is deemed to have accepted them. Therefore, putting up with a washing machine that leaks on the kitchen floor every time it is used for months would perhaps mean that you had accepted the machine, despite its faults. If a buyer keeps the goods for more than a reasonable time he may lose his right to reject them.

So what is a reasonable time? Firstly, time taken to carry out repairs does not count, nor would time spent by a buyer seeking information from the seller. However, there is still a necessity for the buyer to act quickly in making it plain to the seller that the goods are rejected.

We have had successful outcomes in acting for buyers where goods and vehicles they have bought were not of satisfactory quality. Negotiations with the seller have meant that in the majority of cases county court litigation could be avoided. Knowing your rights is a powerful tool for achieving the best results.

JENNIFER CARPENTER — Partner

Adams Harrison's Conveyancing Team



From Left to Right: Rhodri Rees — Residential and Commercial Property Partner, Julie Phillips — Secretary, Lucy Mizon — Secretary, Anne-Marie Robertson — Conveyancing Executive, Sue Dickinson — Secretary, Christina Tapper — Conveyancing Executive, Fiona Hickey — Secretary, Jeanette O'Brien — Solicitor, Amanda Fazzani — Secretary, Teresa Pitts — Secretary, Bill Attwood — Solicitor.

Lexcel: The Mark of Excellence

Adams Harrison was one of the first firms of solicitors to successfully apply for the Law Society's quality kite mark Lexcel in 1998. Even in 2005 only 5% of firms hold this award.

To achieve this status we had to pass a comprehensive quality assurance assessment set by the Law Society covering all areas of our work, procedures, standards, client care and staffing. We are regularly monitored by an independent auditor appointed by the Law Society. The Lexcel auditor conducted a wide-ranging audit in July 2005 and in his report he said:

*** Financial Management:**

A Comprehensive set of management information which is accessible to all fee earners. Sound effective processes, well managed and effectively implemented.

*** Business Strategy:**

A very clear business strategy which is generally understood by fee-earners, well supported by a simple marketing strategy.

*** People Management:**

The Practice has a sound, practical and established approach to Risk Management.

*** File and Case Management:**

The Practice is to be commended for the high standards of file management which have been maintained at a high level for a number of visits now.

TOM HARRISON — Senior Partner



In July this year the local Round Table promoted a week long Carnival starting with a procession around the streets of Saffron Walden of over one hundred floats. The staff and partners decided to enter a float and one of the staff came up with a good idea for the theme of the firm's float to be 'The Addams Family'. The Accounts Department helped by other members of staff organised decorating the float and obtaining costumes. Staff,



partners and family members dressed up as characters from 'The Addams Family' along with other spooky people and animals. Great fun was had by all and lots of money was raised for local charities. Thanks to E.G. Hicks of Little Walden for providing us with a lorry. Look out for us again in the 2008 Carnival. !!!

Public Rights of Way

The Countryside Agency is currently researching public rights of way not currently shown on the Definitive Map. The Definitive Map is constantly being up-dated and is intended to be a record of all public rights of way throughout the United Kingdom.

The Wildlife and Countryside Act 1981 obliges all local highway authorities to modify the Definitive Map if it appears that a right of way should be added, altered or removed. We have fought several Modification Orders at Public Enquiries over the last few years.

Following the Countryside and Rights of Way Act 2000 (C.R.O.W) the Government asked the Countryside Agency to establish an effective means of identifying any historic rights of way in existence before 1949 so that these may be added to the Definitive Map. This process is known as 'The Discovering Lost Ways Project' and is expected to cover the entire countryside in less than 10 years.

Public rights of way are categorised as follows:-

- **Footpaths** — a right of way on foot only.
- **Bridleway** — a right of way on foot, horse, or pedal cycle.
- **By-way open to all traffic (B.O.A.T)** —

for walkers, horse riders and all vehicles.

- **Roads used as public path (R.U.P.P)** — these are often re-classified as either bridleways or B.O.A.T's but under the C.R.O.W Act will be re-classified as restricted by-ways.

The C.R.O.W Act also introduced a statutory duty on local highway authorities to prepare an Improvement Plan for the Public Rights of Way Network in their area to be reviewed every 10 years. The broad aim of the Improvement Plan will be to identify changes necessary to meet the Government's aim of better provision for walkers, cyclists, horse riders and people with mobility problems.

Invariably modifications to the Definitive Map involving the addition of B.O.A.T's are met with near apoplexy by landowners and walkers alike. Suffolk County Council is currently researching two claimed B.O.A.T's and a footpath between Hundon and Sturmer on the Suffolk/Essex border. Modification Orders are likely to follow followed by a Public Enquiry probably in 2006 or 2007. Let battle commence again!

TOM HARRISON — Senior Partner

A leopard never changes its spots or does it?

Until 15th December last year generally a defendant was entitled to have a trial without details being given to the court of any previous criminal convictions or bad character. The implementation of the bad character provisions in the Criminal Justice Act 2003 reverses that position.

The position now is that evidence of a defendant's previous convictions and other misconduct can be disclosed to Magistrates or a jury hearing a trial. This is provided that the previous conduct is relevant, will throw new light on the case, and is not likely to make the trial unfair.

Juries and lay magistrates will now be hearing about the defendant's previous misdemeanours. This has caused public debate. Will those hearing trials against a defendant jump to the conclusion that once a criminal, always a criminal and not really listen to the evidence?

The idea behind the new legislation is that juries should be trusted with all the relevant information to help them reach the correct decision. For those of us representing defendants our task will be to persuade Judges that evidence of bad character should be excluded from the trial if it would be unfair or not in the interests of justice to include it.

The new law was recently considered by the Court of Appeal. The court's rulings included that applications made by the Prosecution to refer to a defendant's bad character should not be made as a matter of routine. A single conviction of the same category or description in most circumstances is unlikely to be considered as relevant. The guidance given by the Court of Appeal offers some reassurance to those against the changes in the law. The debate continues, however as to whether an individual should be judged by their past conduct.

JENNIFER CARPENTER — Partner

Adams HARRISON

CAFCASS: Protecting the Welfare of Children

The Children and Family Court Advisory and Support Service (CAFCASS) was formed in April 2001 to safeguard and promote the welfare of children involved in family court proceedings.

Children become involved in family court proceedings when their parents separate or divorce and they cannot agree on the arrangements for their children. For example there may be a dispute over which parent should have residence of the children or when contact visits should take place.

There are different types of CAFCASS officers depending on the type of case before the court. In most family court proceedings a Children and Family Reporter will be assigned. Their role is to advise the court so that the decisions they make are in the best interests of children. The CAFCASS officer will try to help families agree arrangements at the first court appointment.

If no agreement can be reached or the District Judge feels that it is necessary to have further information then a CAFCASS report will be ordered. The CAFCASS officer will then want to meet the child involved and ascertain his or her wishes and feelings on the matter in dispute. They will also want to talk to both parents and sometimes extended family. In some cases the CAFCASS officer will need to talk to

other professionals such as the child's teacher, doctor or health visitor.

It is important to bear in mind that CAFCASS are experienced in working with and talking to children. They will deal with such meetings sensitively and under no circumstances will they ask a child to choose between his or her parents. Whilst CAFCASS officers are trained in social work they are entirely independent of Social Services, the courts and other such similar agencies.

Their report usually takes up to 10 weeks to prepare before it is sent to the parties involved in the case and the court. It is a confidential document which will only be used in family court proceedings and should only be shown to those people directly involved in that case. The District Judge will take careful notice of what the CAFCASS officer has recommended and if the Judge decides to take a different approach then an explanation will be given as to why.

CAFCASS officers have an important role to play in family court proceedings and parents involved in such court proceedings should bear in mind that they are there to assist families and most importantly to promote the best interests of children.

REBECCA SCOTT — Solicitor

Chariots of Fire - September 18th 2005

For the second year running the firm has entered two teams in the Chariots of Fire run in Cambridge. One team was entered in the mixed category and the other in the veteran category. The event is a relay race and each of the team of six runs 1.7 miles.

There were 400 teams again this year. This time it was the turn of the veterans to beat the youngsters by two minutes, much to the youngster's disgust who will no doubt train extra hard for next year's event.

Thanks to the efforts of both teams for the money that was raised for East Anglia's Children's Hospices.



Periodical Payments for Personal Injury Claimants

Courts have recently acquired the power to order that damages for future pecuniary losses ie earnings and care costs, shall be paid periodically. Previously the Courts were limited to making a final lump sum award with limited provision to order interim payments in the meantime.

The problem with the new provision is that it is not yet clear how periodical payments shall keep pace with inflation. Linking payments to the Retail Price Index (RPI) is not necessarily the answer as other factors may impinge on the increase in value of future losses. RPI is currently around 2.5%

per annum whereas care costs are increasing at about 4 to 4.5 % per annum.

No doubt the Court of Appeal will sort it out later this year.

TOM HARRISON — Senior Partner